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Index #: Unassigned-1412397

Date:

Delafranier, Brian

Time:

The Diocese of Rochester aka Roman Catholic Diocese of
Rochester, a religious corporation
Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester,
NY formerly St. Andrew's Roman Catholic Church of Rochester,
New York, a religious corporation
Gaudio an individual, Robert

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
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ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT STATE OF NEW YORK
COUNTY OF MONROE

-----X
BRIAN DELAFRANIER,

Plaintiff,

v.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

THE DIOCESE OF ROCHESTER (a/k/a
“Roman Catholic Diocese of Rochester”), a
religious corporation;

Index No:

ROMAN CATHOLIC PARISH OF ST.
FRANCES XAVIER CABRINI,
ROCHESTER NY (formerly “St. Andrew’s
Roman Catholic Church of Rochester, New
York”), a religious corporation; and

ROBERT GAUDIO, an individual,

Defendants.

-----X

Plaintiff, BRIAN S. DELAFRANIER, by and through undersigned counsel, brings this action against THE DIOCESE OF ROCHESTER (a/k/a “Roman Catholic Diocese of Rochester”); ROMAN CATHOLIC PARISH OF ST. FRANCES XAVIER CABRINI, ROCHESTER NY (formerly “St. Andrew’s Roman Catholic Church of Rochester, New York”); and ROBERT GAUDIO and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

I. JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR § 301 and § 302, because Defendants reside in the State of New York and committed tortious acts within the State.

2. Jurisdiction is proper because this Complaint seeks monetary damages in excess of

\$25,000.00, exclusive of interest, costs, and attorney's fees.

3. Venue is proper in this Court pursuant to CPLR § 503. The Defendant The Diocese of Rochester has its principal place of business in Monroe County. The Defendant Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY has its principal place of business in Monroe County. The acts and omissions giving rise to this Complaint also occurred in Monroe County.

4. Plaintiff brings this suit within the extended time period as provided for in Sections 208 and 214-G of the Civil Practice Law.

II. PARTIES

5. Plaintiff Brian Delafranier ("Plaintiff") is an adult resident of the State of New York, residing in Monroe County, New York and is otherwise *sui juris*.

6. Defendant The Diocese of Rochester is a Roman Catholic diocese and religious corporation organized pursuant to the Religious Corporations Law, licensed and doing business in the State of New York with a principal place of business at 1150 Buffalo Road, Rochester, New York 14624. At all relevant times, The Diocese of Rochester oversaw, managed, controlled, directed, and operated parishes, schools and churches within its geographical boundaries, including St. Andrew's Roman Catholic Church of Rochester, New York (hereinafter "St. Andrew's Church"), where acts and omissions giving rise to this Complaint occurred, and Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY, the legal successor to St. Andrew's Church. At all relevant times, The Diocese of Rochester hired, trained, oversaw, managed, controlled, and directed priests assigned to work in parishes or churches of the Diocese, including Defendant Robert Gaudio. Defendant The Diocese of Rochester can be served at 1150 Buffalo Road, Rochester, New York 14624, by delivering the summons and complaint to its authorized agent Bishop Salvatore R. Matano, or to said Defendant's attorney, Philip G. Spellane of Harris

Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

7. Defendant Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY (hereinafter "St. Frances Xavier Cabrini") is a Roman Catholic parish within and under the authority of The Diocese of Rochester and a religious corporation organized pursuant to the Religious Corporations law with a principal place of business at 124 Evergreen St., Rochester, NY 14605 in Monroe County, New York. Through various corporate mergers, St. Frances Xavier Cabrini is the legal successor to St. Andrew's Church, and based upon information and belief has assumed the liabilities of St. Andrew's Church alleged herein. Defendant Roman Catholic Parish of St. Frances Xavier Cabrini can be served by delivering the summons and complaint to its attorney Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

8. At all times material, Defendant Robert Gaudio (also referred to herein as "Fr. Gaudio") was an ordained Diocesan priest within The Diocese of Rochester. Defendant The Diocese of Rochester hired, trained, formed, ordained and employed Defendant Robert Gaudio. Defendant The Diocese of Rochester further assigned, supervised and managed Defendant Robert Gaudio, including assigning him to parishes where he was exposed to children. The Diocese ordained Fr. Gaudio in 1974 and assigned Fr. Gaudio to be pastor of St. Andrew's Church from 1979 to 1983. Fr. Gaudio was at all times material hereto an employee and/or agent of Defendant The Diocese of Rochester.

9. At all times material, Defendant St. Andrew's Church hired, employed, supervised and/or managed Defendant Robert Gaudio as an ordained Diocesan Roman Catholic priest. Fr. Gaudio was at all times material hereto an employee and/or agent of St. Andrew's Church.

10. The provisions of Section 1602 of the CPLR do not apply to the within action including nondelegable duty and/or the doctrine of respondeat superior.

III. FACTUAL ALLEGATIONS

1. Plaintiff's Introduction to Fr. Robert Gaudio; The Abuse

11. In or around 1979, when Plaintiff Brian Delafranier was approximately fifteen years old, Plaintiff attended St. Andrew's Church and School located at 900 Portland Ave, Rochester, New York 14621. The Delafraniers were longtime residents of Rochester, and as devout Roman Catholics, had ensured that all of their children would receive a good Catholic education.

12. As devout members of the Roman Catholic Church, the boys of the Delafranier household served as altar boys. While school was in session, Plaintiff Brian Delafranier would serve as an altar boy at St. Andrew's Church every day of the week. Brian's frequent appearance in the church paired with his small frame led him to be called "bird" by others in the church.

13. In 1979 the Diocese of Rochester transferred Fr. Gaudio from St. Alphonsus Church in Auburn, NY to serve as an assistant pastor at St. Andrews Church. At the time of the events described herein, Defendants The Diocese of Rochester and/or St. Andrew's Church were the legal owners and/or tenants/occupiers of St. Andrew's Church.

14. At all times material, Plaintiff Brian Delafranier revered and trusted the Roman Catholic Church, The Diocese of Rochester, the Bishop of The Diocese of Rochester, priests, Fr. Gaudio, and all Roman Catholic clergy. Plaintiff was raised Roman Catholic, attended mass within the Diocese and took part in the sacraments. Plaintiff was taught to believe priests, including Fr. Gaudio, were special, sacred, pure and better than lay people. Plaintiff was taught to trust priests, to do what they said and to never disparage them.

15. In approximately 1979, when Plaintiff was around fifteen years old, Fr. Robert

Gaudio sexually assaulted, sexually abused, and/or engaged in unwanted sexual contact with the Plaintiff. Fr. Gaudio sexually assaulted, abused, and/or had sexual contact with said Plaintiff on the premises of St. Andrew's Church while Plaintiff was an altar boy and Fr. Gaudio was acting as a priest.

16. Fr. Gaudio's abuse of Plaintiff began shortly after he transferred to St. Andrew's Church. Fr. Gaudio would hug Plaintiff in the church vestibule, rubbing his body against Plaintiff's body in a sexual manner. Fr. Gaudio would also brush against Plaintiff, as he was changing in the church sacristy, rubbing his body against Plaintiff's genitals and buttocks.

17. Fr. Gaudio exerted authority over Plaintiff. Plaintiff feared what would happen if he disobeyed this priest and/or disclosed the abuse to anyone.

18. Over time, Fr. Gaudio escalated his abuse. He began to grope Plaintiff's buttocks and genitals over and under Plaintiff's clothing. Fr. Gaudio reached into Plaintiff's pants and fondled his genitals with skin on skin contact. He forced Plaintiff to fondle Fr. Gaudio's penis until Fr. Gaudio became erect. This occurred approximately five or six times, until Plaintiff voiced his objections directly to Fr. Gaudio. When Plaintiff refused to allow Fr. Gaudio to touch him and refused to touch Fr. Gaudio, Fr. Gaudio became visibly angry and dismissed Plaintiff from being an altar boy.

19. Shortly after dismissal from the altar boy program, Plaintiff experienced a severe mental health decline.

2. Defendants' Responsibility for the Abuse Committed by Fr. Gaudio

20. At all times relevant to the allegations set forth herein, Father Robert Gaudio was a priest employed, trained, ordained, assigned, supervised and managed by Defendant The Diocese of Rochester and was an employee and/or agent for said Defendant. All acts and omissions of Fr. Gaudio were done in the course and scope of his employment and/or agency for Defendant The

Diocese of Rochester.

21. Upon his ordination in 1974, The Diocese of Rochester assigned Fr. Gaudio to be an associate pastor at Nativity of the Blessed Virgin Mary Church in Brockport, New York.

22. Shortly thereafter, The Diocese of Rochester transferred Fr. Gaudio to St. Alphonsus Church in Auburn, NY. He remained there through 1979.

23. In 1979, The Diocese of Rochester transferred Fr. Gaudio to St. Andrew's Church in Rochester, NY, where Plaintiff and his family were parishioners. He remained there through 1983.

24. In 1983, The Diocese of Rochester transferred Fr. Gaudio to Holy Name of Jesus, Greece Church in Greece, NY. He remained there through 1985.

25. In 1985, The Diocese of Rochester assigned Fr. Gaudio to be a pastor at St. Monica's Church in Rochester, NY. He served there until 1992.

26. In 1992, The Diocese of Rochester assigned Fr. Gaudio to be the pastor for the Catholic Communities of St. Anne's Church in Palmyra, NY and St. Gregory's Church in Marion, NY. He remained in this role until approximately 2004.

27. In 2004, The Diocese of Rochester transferred Fr. Gaudio to St. Christopher's Church in North Chili, NY to serve as pastor. He remained in this role until February, 2019, when Plaintiff reported his abuse by Fr. Gaudio to The Diocese of Rochester, who restricted Fr. Gaudio from engaging in public ministry.

28. By holding Fr. Robert Gaudio out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendants entered into a special relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants' undertaking the care and guidance of the then vulnerable Plaintiff, Defendants held a position of

empowerment over Plaintiff.

29. Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the Plaintiff from effectively protecting himself, and Defendants thus entered a special relationship with Plaintiff. By holding themselves out as a safe, moral, and trusted institution to adults caring for Plaintiff, Defendants induced said adults to entrust Plaintiff to Defendants and thereby deprived Plaintiff of the protection of said adults.

30. At all times material, Fr. Gaudio's sexual abuse of Plaintiff was foreseeable. The problem of clergy sexual abuse of minors is well-documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book of Gomorrah* that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6). Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo*, about the punishment for "A cleric or monk who seduces youths or young boys" being public flogging, loss of tonsure and six months in jail, among other punishment. In 1143 or 1144, a professor at the University of Bologna named Gratian, known as the "Father of the Science of Canon Law," identified in his work the *Decretum*, the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

31. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, which was based upon the 1917 Code of Canon Law which stated:

Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.

32. This knowledge that Catholic clergy were sexually abusing minors continued through the middle ages and into recent history. In 1962, Pope John XXIII approved the

publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law for solicitation of sex in the confessional. This document contained prohibitions prohibiting clergy from having sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world and was to be kept by them with the deepest secrecy. In addition, this document reflected the Catholic Church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

33. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order of priests called the Servants of the Paracletes. This religious order was founded in order to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he had already treated priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, "code 3," to describe the offense. By 1966, the Paracletes began specializing in treatment of pedophile Catholic clergy.

34. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that as early as February 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

35. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled *The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood* to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity manifested itself in heterosexual and homosexual activity. In 1990, psychologist and priest, A.W.

Richard Sipe, published a study involving 1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

36. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled "*The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner*" by Fr. Thomas Doyle, F. Ray Mouton and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A significant portion of this document describes how significant the sexual abuse of children by Catholic clergy had become.

37. As to Fr. Gaudio, specifically, Defendants knew or should have known that Fr. Gaudio was a sexual risk to children. Fr. Gaudio abused Plaintiff in public areas of St. Andrew's Church where anyone could witness his actions. The Diocese of Rochester's many reassignments, and the type of reassignments, further provide circumstantial evidence that the Diocese knew Fr. Gaudio had problems.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANT ROBERT GAUDIO

SEXUAL ABUSE/BATTERY

38. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

39. On multiple occasions, Defendant Robert Gaudio intentionally made contact with the Plaintiff's body, touching the Plaintiff's genitals and buttocks.

40. Defendant Robert Gaudio's touching of Plaintiff was offensive and unwanted.

41. As a direct and proximate result of Defendant Robert Gaudio's offensive and unwanted sexual touching, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress,

embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income and other damages, past and future.

42. As a direct and proximate result of Defendant Robert Gaudio's offensive and unwanted sexual touching, Plaintiff was injured and damaged; said injuries and damages include, but are not limited to, physical injury, emotional distress, loss of enjoyment of life, loss of ability to engage in gainful activity, loss of income and loss of ability to perform his normal daily activities and to obtain the full enjoyment of life.

43. As a direct and proximate result of Defendant Robert Gaudio's offensive and unwanted sexual touching, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff demands judgment against Defendant Robert Gaudio for compensatory damages, costs and such other and further relief as this Court deems proper.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS

THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

NEGLIGENCE/GROSS NEGLIGENCE

44. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

45. Defendants allowed Fr. Gaudio to have unsupervised and unlimited access to minor children while in a position of authority over them, including at St. Andrew's Roman Catholic Church in Rochester, New York, located at the time within The Diocese of Rochester.

46. At all times material, Fr. Gaudio was employed by Defendant The Diocese of Rochester and St. Andrew's Church and was an agent for them.

47. At all times material, Fr. Gaudio remained under the direct supervision, employ, and control of the Defendant The Diocese of Rochester and St. Andrew's Church.

48. Upon information and belief, before Plaintiff was sexually abused by Fr. Gaudio, Defendants had actual or constructive knowledge of material facts regarding Fr. Gaudio's sexual misconduct, impulses, and behavior, and each had actual or constructive knowledge that he posed a sexual risk of harm to children.

49. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Fr. Gaudio's problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

50. Plaintiff was raised in a devout Roman Catholic family, regularly celebrated mass, received the sacraments, participated in church-related activities, and received a Roman Catholic education. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church and its agents, The Diocese of Rochester and its agents, including the Bishop, and Fr. Gaudio.

51. Defendants held Fr. Gaudio out as a qualified Roman Catholic priest who was safe with children and undertook the education, religious instruction, and spiritual and emotional guidance of Plaintiff. The Bishop of The Diocese of Rochester exercised a direct role over Plaintiff. Accordingly, Plaintiff placed trust in Defendants so that Defendants and their agents gained superiority and influence over Plaintiff. Defendants entered a special relationship with the Plaintiff and his family.

52. Defendants knew or should have known that some of the leaders and people working at Catholic institutions within The Diocese of Rochester were not safe for children.

53. Defendants knew or should have known that they lacked sufficient information about whether their leaders and people working at Catholic institutions within The Diocese of Rochester were safe around children.

54. Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within The Diocese of Rochester.

55. Defendants knew or should have known that they lacked sufficient information about whether there was a risk of child sex abuse for children participating in Catholic programs and activities within The Diocese of Rochester.

56. Defendants knew or should have known that they had other agents who had sexually molested children. Defendants knew or should have known that child molesters have a high rate of recidivism. Defendants knew or should have known that there was a specific danger of child sex abuse for children participating in Defendants' programs, including Plaintiff.

57. Defendants held their leaders and agents, including Fr. Gaudio, out as people of high morals and as possessing immense power. They taught families and children, including Plaintiff and his family, to obey, respect and revere these leaders and agents.

58. Defendants solicited youth and families, including Plaintiff and his family, to their programs, including the altar boy program. Defendants specifically marketed to youth and families in order to recruit youth and families to their programs.

59. Defendants held out the people that worked in the programs, including Fr. Gaudio as safe for children/youth.

60. Defendants made negligent representations to Plaintiff and his family during each and every year of his minority. Plaintiff and/or his family relied upon these representations, which resulted in Plaintiff being put in a vulnerable situation with Fr. Gaudio and subjected to his sexual misconduct and harm.

61. Defendants owed Plaintiff a duty of reasonable care because they assumed duties owed to Plaintiff and had superior knowledge about the risk that Fr. Gaudio posed to Plaintiff, the

risk of abuse in general in their programs, and/or the risks that their facilities posed to minor children. Defendants had the duty to protect the moral purity of Plaintiff and other Roman Catholic children within The Diocese of Rochester.

62. Defendants owed Plaintiff a duty of reasonable care because they assumed that duty and because they solicited youth and parents for participation in their youth programs, including Plaintiff.

63. Defendants owed Plaintiff a duty of reasonable care because they undertook custody of minor children, including Plaintiff.

64. Defendants owed Plaintiff a duty of reasonable care because they promoted their facilities and programs, including the altar boy program, as being safe for children, including Plaintiff.

65. Defendants owed Plaintiff a duty of reasonable care because they held out their agents, including Fr. Gaudio, to the public, including Plaintiff, as safe to work with children.

66. Defendants owed Plaintiff a duty of reasonable care because they encouraged parents and children, including Plaintiff and his family, to spend time with their agents; and/or encouraged their agents, including Fr. Gaudio, to spend time with, interact with, and recruit children.

67. Defendants had a duty to Plaintiff to protect Plaintiff from harm because Defendants' actions created a foreseeable risk of harm to Plaintiff.

68. Defendants breached their duties by exposing Plaintiff to a known pedophile.

69. Defendants breached their duties by exposing Plaintiff to a priest Defendants knew or should have known was a pedophile

70. Defendants breached their duties by recruiting, hiring, and maintaining Fr. Gaudio

in a position of authority over children, including Plaintiff.

71. Defendants breached their duties by exposing Fr. Gaudio to children, including Plaintiff.

72. Defendants breached their duties by leaving Fr. Gaudio alone with children unsupervised, including Plaintiff.

73. Defendants breached their duties by inducing Plaintiff and his parents to entrust Plaintiff to Fr. Gaudio.

74. Defendants breached their duties by failing to follow policies and procedures designed to prevent child sex abuse and/or failing to implement sufficient policies and procedures to prevent child sex abuse.

75. Defendants breached their duties by failing to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working.

76. Defendants breached their duties by failing to adequately inform families and children, including Plaintiff, of the known risks of child sex abuse within The Diocese of Rochester.

77. Defendants breached their duties by holding out their employees and agents, including Fr. Gaudio, as safe and wholesome for children to be with.

78. Defendants breached their duties by failing to investigate risks of child molestation.

79. Defendants breached their duties by failing to properly train the workers at institutions and programs within Defendants' geographical confines.

80. Defendants breached their duties by failing to have any outside agency test their safety procedures.

81. Defendants breached their duties by failing to protect the children, including

Plaintiff, in their programs from child sex abuse and failing to adhere to the applicable standard of care for child safety.

82. Defendants breached their duties by failing to investigate the amount and type of information necessary to represent their institutions, programs, and leaders and people, including Fr. Gaudio, as safe.

83. Defendants breached their duties by failing to respond to and/or investigate information of improper conduct with children of their employee and agent, Fr. Gaudio.

84. Defendants breached their duties by failing to properly train their employees to identify signs of child molestation by fellow employees.

85. Defendants breached their duty to use ordinary care in determining whether their facilities were safe and/or to determine whether they had sufficient information to represent their facilities as safe.

86. Defendants breached their duty of care by recruiting, hiring, and maintaining Fr. Robert Gaudio at their facilities.

87. Defendants breached their duty of care by maintaining a dangerous condition on the premises of their facilities (i.e., a priest Defendants knew or should have known posed a risk of pedophilic harm to children).

88. Defendants breached their duty of care by holding out their facilities as a safe and moral place for children, knowing the facilities were not safe nor moral.

89. Defendants breached their duty of care by failing to have sufficient policies and procedures to prevent abuse at their facilities.

90. Defendants breached their duty of care by failing to investigate risks at their facilities.

91. Defendants breached their duty of care by failing to properly train the workers at their facilities and failing to have any outside agency test their safety procedures.

92. Defendants breached their duty of care by failing to investigate the amount and type of information necessary to represent their facilities as safe.

93. Defendants breached their duty of care by failing to train their employees properly to identify signs of child molestation by fellow employees.

94. Defendants breached their duties to Plaintiff by holding out clergy members, including Fr. Gaudio, as safe, moral, and trustworthy people and by failing to warn Plaintiff and/or Plaintiff's family of the risk that Fr. Gaudio posed and the known risks of child sexual abuse by clerics in general.

95. Defendants breached their duties to Plaintiff by failing to warn Plaintiff about any of the knowledge that the Defendants had about child sex abuse perpetrated by clergy or Fr. Gaudio.

96. Defendants breached their duties to Plaintiff by failing to report Fr. Gaudio's abuse of children to the police and law enforcement.

97. As a direct and proximate result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful employment, loss of income and other losses and damages, past and future.

98. As a direct and proximate result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life.

99. As a direct result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS

THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

100. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

101. At all times material, Fr. Gaudio was employed by, or an agent of, Defendants The Diocese of Rochester and St. Andrew's Church.

102. At all times material, Fr. Gaudio was on duty as a priest 24 hours per day, 7 days per week.

103. At all times material, Fr. Gaudio remained under the direct supervision, employ, and control of the Defendants.

104. At all times material, Defendants had the right to control the manner and means of Fr. Gaudio's performance.

105. At all times material, Defendants paid Fr. Gaudio's salary and paid for Fr. Gaudio's health insurance and other benefits.

106. At all times material, Defendants furnished an office and other materials, supplies, and tools required for Fr. Gaudio to perform in his position as a priest.

107. At all times material, Defendants controlled the premises where Fr. Gaudio

performed as a priest.

108. At all times material, Defendants had the power to terminate the employment of Fr. Gaudio.

109. Defendants allowed Fr. Gaudio to have unsupervised and unlimited access to young children at St. Andrew's Church, located at the time within The Diocese of Rochester.

110. Among other duties, Defendants employed Fr. Gaudio to operate programs, including youth, altar boy and spiritual counseling programs at St. Andrew's Church.

111. Defendants created a master-servant relationship with Fr. Gaudio, employing him to interact and supervise children participating in programs at St. Andrew's Church, including the altar boy program.

112. At all times material hereto, unwanted sexual contact by Fr. Gaudio upon Plaintiff occurred during his regular working hours and at the place of his employment with Defendants while performing duties of a priest on behalf of his employers, namely running the altar boy program and supervising Plaintiff, an altar boy.

113. Fr. Gaudio engaged in unpermitted, harmful, and offensive sexual contact with the Plaintiff on the physical premises of and around St. Andrew's Church. Fr. Gaudio sexually assaulted Plaintiff when Plaintiff was a minor and without Plaintiff's consent.

114. The sexual contact by Fr. Gaudio occurred in the course and scope of his employment with Defendants.

115. The sexual contact by Fr. Gaudio was generally foreseeable to Defendants.

116. Upon information and belief, before Plaintiff was sexually abused by Fr. Gaudio, Defendants had actual or constructive knowledge of material facts regarding Fr. Gaudio's sexual misconduct, impulses, and behavior but failed to act on that knowledge and exposed Plaintiff as a

child to Fr. Gaudio, thereby increasing the likelihood that Plaintiff would be harmed.

117. The sexual contact by Fr. Gaudio was closely connected to what he was employed to do as a priest with Defendants, and/or was otherwise naturally incidental to his job duties.

118. Fr. Gaudio's conduct was motivated, at least in part, by a desire to serve his employer's business interests or otherwise meet the objectives of his employment, however misguided.

119. Alternatively, Fr. Gaudio's conduct constituted an authorized, minor deviation from his employment that was authorized and/or ratified by Defendants.

120. As a direct and proximate result of Fr. Gaudio's conduct, Plaintiff has suffered damages as set forth herein.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS

THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

NEGLIGENT HIRING, RETENTION, AND SUPERVISION

121. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

122. At all material times, Defendants The Diocese of Rochester and St. Frances Xavier Cabrini, by and through their agents, managers, employees, and directors owed a duty to Plaintiff to use reasonable care to protect his safety, care, well-being and health while he was under the care and custody or in the presence of the Defendants. These duties encompassed the use of reasonable care in the hiring, retention and supervision of Fr. Gaudio and otherwise providing a safe environment for children.

123. Prior to the sexual misconduct perpetrated by Fr. Gaudio upon Plaintiff, Defendants

knew, or in the exercise of reasonable care, should have known, of the general problem of Catholic clergy engaging in sexual misconduct with children who were in The Diocese of Rochester and St. Andrew's Church programs.

124. Prior to the sexual misconduct perpetrated by Fr. Gaudio upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, that Fr. Gaudio was unfit for the duties assigned to him, that he did not exhibit appropriate behavior with children, and he otherwise posed a risk of perpetrating unwanted sexual contact upon children.

125. Given actual or constructive knowledge of Fr. Gaudio's dangerous propensities, the Defendants had a duty to act reasonably in all decisions relating to his hiring, supervision, and retention as an employee.

126. Defendants failed to exercise reasonable care in one or more of their decisions to hire, supervise, and retain Fr. Gaudio and therefore exposed Plaintiff to an unreasonable risk of harm.

127. Defendants affirmed and ratified Fr. Gaudio's misconduct with Plaintiff. Given the actual and constructive knowledge of the likelihood that Fr. Gaudio and/or other clergy would engage children in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendants.

128. Defendants and their agents had superior knowledge of the likelihood that Fr. Gaudio would engage in unwanted sexual contact with children that he encountered in his position as a priest and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact.

129. At all relevant times, Defendants' acts and omissions created an environment which fostered unwanted sexual contact and exploitation against the people it had a duty to protect, including Plaintiff.

130. At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to their care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

131. As a direct and proximate result of the negligence of Defendants, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, and has incurred and/or will incur costs for treatment in the future. These injuries are permanent and ongoing in nature.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini, for compensatory damages, costs and such other and further relief as this Court deems proper.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS

THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

NEGLIGENCE/PREMISES LIABILITY

132. Plaintiff realleges and incorporates all paragraphs as if set forth fully herein.

133. Plaintiff was a business invitee of Defendants when Fr. Gaudio engaged him in unwanted sexual contact.

134. Defendants owed Plaintiff a duty to protect him from dangerous conditions on their premises that they knew about, or in the exercise of reasonable care, could have discovered.

135. Defendants owed Plaintiff a duty to provide a reasonably safe environment where he would be free from the threat of unwanted sexual contact while on Defendants' premises.

136. Defendants owed Plaintiff a duty to take reasonable precautions to ensure his safety

while on the premises of Defendants.

137. Prior to the sexual misconduct perpetrated by Fr. Gaudio upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, of the general problem of priests and other clergy engaging in sexual misconduct with children, including on their premises.

138. Prior to the sexual misconduct perpetrated by Fr. Gaudio upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, that Fr. Gaudio was unfit for the intimate duties assigned to him, that he did not exhibit appropriate behavior with children, and otherwise posed a risk of perpetrating unwanted sexual contact upon children.

139. Defendants breached the duty owed to Plaintiff by failing to make the premises reasonably safe for Plaintiff despite what they knew or should have known about the existence of a potential threat of harm to Plaintiff on their premises.

140. Defendants breached the duty they owed to Plaintiff by failing to warn Plaintiff of the dangers and risks involved in going onto the premises at St. Andrew's Church given their superior knowledge of the potential risk of harm to Plaintiff.

141. At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to their care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

142. As a direct and proximate result of the negligence and gross negligence of Defendants, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation, loss of ability to engage in gainful activity, loss of income and the inability to lead a normal life, and has incurred and/or will continue to incur costs for treatment and other injuries and damages. These injuries and damages are permanent and ongoing in nature.

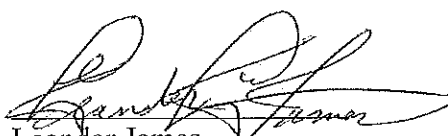
WHEREFORE, Plaintiff demands judgment against the Defendants, for a sum in excess of the jurisdictional limits of all lower courts, together with the costs and disbursements and other expenses necessary in this action.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Rochester, New York
Dated: August 14, 2019

Yours, etc.,



Leander James
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20 Vesey Street
New York, NY 10007

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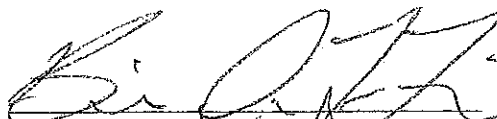
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF MONROE) ss:

Brian Delafranier affirms under penalty of perjury, that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to the affirmant's own knowledge, except at to those matters therein stated to be on information and belief and as to these matters affirmant believes them to be true.

Dated: Rochester, New York

August 14, 2019



Brian Delafranier